S&P Electric *and* Local 701, International Brotherhood of Electrical Workers. Case 13-CA-40583

September 26, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA, AND MEMBERS LIEBMAN AND WALSH

On a charge filed by the Union on October 17, 2002, the General Counsel of the National Labor Relations Board issued a complaint on January 30, 2003, against S&P Electric, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. The complaint and the charge were properly served on the Respondent. The complaint advised the Respondent that if it failed to file an answer within the 14-day time period set forth in Section 102.20 of the Board's Rules and Regulations, all allegations in the complaint would be deemed to be admitted to be true. On February 24, 2003, counsel for the General Counsel sent the Respondent a letter stating that the Respondent had failed to file an answer to the outstanding complaint within the time required, and that if the answer was not filed on or before March 3, 2003, a Motion for Summary Judgment would be filed with the Board. In response to the General Counsel's February 24, 2003 letter, on February 25, 2003, the Respondent, which is acting pro se in this proceeding, faxed to the General Counsel a letter substantially identical to its postcharge statement of position. On March 3, 2003, counsel for the General Counsel notified the Respondent that this response was insufficient to constitute an answer, and that a Motion for Summary Judgment would be filed if the Respondent did not file an answer to the complaint by March 6, 2003.

On March 17, 2003, the General Counsel filed a Motion for Summary Judgment with the Board. On March 19, 2003, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On April 1, 2003, the Respondent timely replied to the Notice to Show Cause with a letter citing its resubmitted position statement.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Summary Judgment

Section 102.20 of the Board's Rules provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered to be true and shall be so found by the Board." Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated February 24, 2003, notified the Respondent that unless an answer was received by March 3, 2003, a Motion for Summary Judgment would be filed. After receiving the Respondent's February 25, 2003 letter, the General Counsel notified the Respondent that the letter was insufficient to constitute an answer. In his Motion for Summary Judgment, the General Counsel states, among other things, that "Respondent's resubmission of the position statement it provided during the investigation in response to the Complaint does not suffice as an Answer under the Board's Rules and Regulations."

The complaint alleges that on or about October 1, 2002, the Respondent, through Paul Fisher, caused the layoff of Terry S. Jones from E. Stone Electric because he believed Jones had engaged in union activities, and in order to discourage employees from engaging in union activities, in violation of Section 8(a)(1) and (3).

On February 25, 2003, in response to the complaint, the Respondent, acting pro se, sent a letter to the Regional Director substantially identical to the one it had submitted as a position statement during the investigation of the charge. The Respondent, through Fisher, states, in relevant part:

> . . . I felt the need to complain to Keith Weirsma, (E. Stone's foreman) about sub-standard performance. My complaints were primarily caused by the performance of Terry Jones (whose name I didn't know until receiving the charge). It seemed that I never "caught" him working at any time I arrived on the jobsite and that progress over-all seemed to have slowed distinctly with his joining the Stone crew.
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> Coincidently, the job was at the point that utilizing four (4) men could no longer be cost effective. On 9/27, I talked to Keith regarding reducing his crew to two (2) men, and requested that he and the apprentice who was on board at the time be the one's [sic] to continue. The reduction was to occur immediately following October 4th. Although it is not my place to reprimand or terminate another crew's staff, I did contact Ed Stone to say that I would be ashamed to bill for one of my men, if he performed like this man does. I observed that Mr. Jones was on the job through Wednesday, October 2nd, when paychecks were handed out. I didn't know of his whereabouts after that day. As for Mr. Jones' allegation that he was terminated because I blamed him

> for "calling Local 701": Keith had advised me that I had been reported to Local 701 prior to Mr. Jones [sic] arrival on the job; there would be no logical way for me to blame him for any potential problems in that regard.

As noted above, the General Counsel argues that the Respondent's February 25, 2003 letter does not constitute an acceptable answer to the complaint allegations. In the circumstances presented here, we disagree. Given the Respondent's pro se status, we find that the February 25, 2003 letter is sufficiently responsive to certain central complaint allegations to warrant a hearing on those issues.

The Board "has typically shown some leniency toward a pro se litigant's efforts to comply with our procedural rules." *A.P.S. Production*, 326 NLRB 1296 (1998). Under this approach, the Board has found sufficient a pro se respondent's response to complaint allegations where that response denies the operative facts of the alleged unfair labor practices. *Carpentry Contractors*, 314 NLRB 824, 825 (1994). Such responses by pro se respondents may constitute legally sufficient "answers" even if not so termed. In *Central States Xpress*, 324 NLRB 442 (1997), the pro se respondent resubmitted its postcharge (precomplaint) statement of position as an informal answer to the complaint and expressly intended its postcharge statement of position to serve as an answer to the subsequent complaint. The Board found the postcharge statement of position acceptable in lieu of a formal answer because it contained a sufficiently clear denial of the operative facts of the unfair labor practices alleged in the complaint.

Because the pro se Respondent here filed its letter on February 25, 2003, one day after the General Counsel sent its reminder letter, we find that the Respondent's letter was timely.

Although the Respondent's letter was substantially identical in content to its postcharge precomplaint statement of position, the Respondent reprinted, re-dated and addressed the letter to counsel for the General Counsel. Indeed, the General Counsel concedes that the letter was in response to his letter of February 24. In addition, the Respondent's letter effectively denies paragraphs V(d) and VI of the complaint. Paragraph V(d) alleges that the Respondent caused Jones' layoff because Jones had engaged in, or the Respondent believed he had engaged in, union activities, and to discourage employees from engaging in union activities. Paragraph VI alleges that the Respondent's conduct was discriminatory and violated Section 8(a)(1) and (3). Moreover, the Respondent asserts an alternate motive for causing Jones' layoff. Based on these efforts by the Respondent, we deem the Respondent's letter to be an adequate response to the complaint as to these allegations. Because the Respondent has thereby denied these allegations, we deny the General Counsel's Motion for Summary Judgment as to complaint paragraphs V(d) and VI.

However, the complaint also contains certain allegations that are left unchallenged by the Respondent. The Respondent does not deny paragraphs I-IV, pertaining to the filing and service of the unfair labor practice charge, jurisdiction, and Fisher's status as owner, supervisor, and agent of the Respondent. In addition, the Respondent explicitly admits the allegations of paragraphs V(a) and (c), which allege that the Respondent subcontracted with E. Stone Electric to perform work on a time and material basis on a job site located at the Oak Brook Club, Oak Brook, Illinois, and that the Respondent caused Jones' layoff. Finally, the Respondent does not deny paragraph V(b), which alleges that, pursuant to the subcontracting arrangement described in paragraph V(a), on or about September 25, 2002, E. Stone Electric hired Terry S. Jones to perform work at the Oak Brook Club job site. Accordingly, we grant the General Counsel's Motion for Summary Judgment with respect to those paragraphs in the complaint.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times Respondent, a corporation with an office and place of business in Addison, Illinois (Respondent's facility), has been engaged in the construction industry as an electrical contractor. During the past calendar year, a representative period, Respondent, in conducting its business operations described above, derived gross revenues in excess of $500,000. During the past calendar year, a representative period, Respondent, in conducting its business operations described above, purchased and received at its Addison, Illinois facility goods valued in excess of $50,000 directly from points outside the State of Illinois. At all material times Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. At all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Based on the Respondent's failure to file a sufficient answer denying these allegations, we find the following: At all material times, Paul Fisher has held the position of Respondent's owner and has been a supervisor and agent of Respondent within the meaning of Section 2(11) and (13) of the Act. The Respondent subcontracted with E. Stone Electric to perform work on a time and material

basis on a job site located at the Oak Brook Club, Oak Brook, Illinois. Pursuant to the subcontracting arrangement described above, on or about September 25, 2002, E. Stone Electric hired Terry S. Jones to perform work at the Oak Brook Club job site. On or about October 1, 2002, Paul Fisher caused the layoff of Terry S. Jones from E. Stone Electric at the work site located at the Oak Brook Club, Oak Brook, Illinois.

ORDER

The General Counsel's Motion for Summary Judgment is granted as to complaint paragraphs I-IV and V(a)-(c), but is denied with respect to the allegations set forth in complaint paragraphs V(d) and VI. This proceeding is remanded to the Regional Director for Region 13 for a hearing before an administrative law judge limited to the allegations set forth in complaint paragraphs V(d) and VI. The administrative law judge shall prepare and serve on the parties a decision containing findings of fact, conclusions of law, and recommendations based on all of the record evidence. Following service of the administrative law judge's decision on the parties, the provisions of Section 102.46 of the Board's Rules shall be applicable.

Dated, Washington, D.C., September 26, 2003

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD